produced the passive condition. *Zollman* v. *Baltimore & Ohio S. W. Ry.*, 121 N. E. 135 (Ind. App.); *Burk* v. *Creamery P. M. Co.*, 126 Iowa, 730, 102 N. W. 793. See Joseph H. Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633, 650. Whether or not a risk is created involves the foreseeability of the intervening force. This is the only circumstance in which foreseeability is a factor in determining proximate causation. Considering the oncoming train as an intervening force, its intervention was clearly risked by the condition proximately caused by the defendant. On either view the causation was proximate. The decision is wrong.

RESTRAINT OF TRADE — FEDERAL TRADE COMMISSION — RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — ENFORCING RESALES AT FIXED PRICES. — A corporation engaged in manufacturing "branded" food products sought to fix resale prices of wholesalers, jobbers, and retailers. The company refused to sell to those distributors who resold at other than the stated prices, or who sold to others who did so. To effectuate its purpose, the company inaugurated a plan of tracing sales, marking packages, reporting infractions, and listing distributors. The case was heard before the Federal Trade Commission on an agreed statement of facts stating that no contract, express or implied, for maintaining resale prices existed. The Commission condemned the plan as an unfair method of competition under § 5 of the Federal Trade Commission Act (38 STAT. AT L. 719). The Circuit Court of Appeals for the 2nd Circuit set aside the order of the Commission. *Held*, that the judgment be reversed. *Federal Trade Commission* v. *Beech-Nut Packing Co.*, U. S. Sup. Ct., Oct. Term, 1921, No. 47.

It is the accepted doctrine of the United States Supreme Court that contracts between manufacturers of "branded" or "specialty" products and the wholesalers or retailers through whom they distribute, fixing resale prices, are illegal under the Sherman Act. *Dr. Miles Medical Co.* v. *Park & Sons*, 220 U. S. 373; *United States* v. *A. Schrader's Sons, Inc.*, 252 U. S. 85. This doctrine has aroused much criticism, deservedly so, it is believed. See KALES, CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE, c. 4. See Gilbert H. Montague, "Should the Manufacturer Have the Right to Fix Selling Prices?", 63 ANNALS AM. ACAD. POL. AND SOC. SCI., 55. See 33 HARV. L. REV. 966. But, somewhat illogically, it was held legal for a manufacturer to refuse to sell to any who did not resell at fixed prices, thus achieving the same business result as he would have through contracts. *United States* v. *Colgate & Co.*, 250 U. S. 300. Though the principal case arises under the Federal Trade Commission Act and not under the Sherman Act, the test of illegality under either should be the same. See KALES, *op. cit.*, c. 12. See Cornelius Lynde, "The Federal Trade Commission and Its Relation to the Courts," 63 ANNALS AM. ACAD. POL. AND SOC. SCI., 24. No weight is given, on review, to the Commission's conclusions of law. See *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427; *National Harness Mfrs. Ass'n* v. *Federal Trade Commission*, 268 Fed. 705, 707. The court in the principal case purports to save the rule of the *Colgate* case. But the practical effect of its decision is necessarily otherwise. While not in terms denying the right to refuse to sell to those who do not comply with the restrictions, it denies the right to use any means of discovering noncompliance. In effect, the court has nullified a desirable exception to a questionable rule.

STATUTE OF FRAUDS — SALES OF GOODS, WARES AND MERCHANDISE — CONTRACT TO ESTABLISH CREDIT BY CABLE TRANSFER. — A bank in New York orally contracted to ". . . deliver to defendant . . . a cable transfer of exchange . . .", *i. e.* to make available to a customer, by cable, a credit of £20,000 in London, at any time within four months, at the customer's